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Paper No. 8

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JUN 29 2004

OFFICE OF PETITIONS

In re Application of	:	
Frankenbach, et al.	:	ON PETITION
Application No. 09/805,099	:	
Filed: March 13, 2001	:	
Attorney Docket No. 8244	:	
For: METHODS FOR IMPROVING THE	:	
PERFORMANCE OF FABRIC WRINKLE	:	
CONTROL COMPOSITIONS	:	

This decision addresses two petitions: (1) the petition under 37 CFR 1.47(a) and (2) the petition under 37 CFR 1.137(b) to revive the above-identified application. Both petitions were filed on May 14, 2004 (certificate of mailing date May 10, 2004).

The petition under 37 CFR 1.47(a) is **dismissed**.

The petition under 37 CFR 1.137(b) is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.47(a) and 1.137(b)." Petitioners are advised that this is not a final agency decision.

On May 14, 2001, the Office mailed a Notice to File Missing Parts of Nonprovisional Application to petitioners, which set forth a two (2) month period to submit an executed oath or declaration and a \$130.00 surcharge under 37 CFR 1.16(e) for its late filing. The Office has no record of receiving a timely reply. Therefore, the application became abandoned on July 15, 2001. A Notice of Abandonment was mailed on October 28, 2003.

PETITION UNDER 37 CFR 1.47(a)

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (1) above.

As to item (1), applicants have failed to establish that the inventor has refused to sign the declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The Office requires that the non-signing inventor be provided with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d). The petition and supporting exhibits establish that Carlos H. Behrens, the non-signing inventor, was successfully mailed a copy of the declaration for patent application along with a letter requesting his signature thereon.. The petition does not establish that a complete copy of the application was mailed to Mr. Behrens' last known address.

Mr. Behrens must have the complete application in his possession in order to make an informed decision as to whether he joins in its filing. After all, Mr. Behrens cannot make the necessary statements found in the declaration-- i.e. "I have reviewed and understand..." -- without having examined the patent application.

When petitioners can show that Mr. Behrens was mailed or received the complete application and that he either refused to sign the declaration or would not respond to the request that he sign the declaration within a reasonable amount of time, petitioners will have satisfied this requirement.

If there is an express oral refusal, that fact along with the time and place of the refusal must be stated in a statement of facts. If there is a written refusal, a copy of the refusal must be submitted. Finding refusal by conduct is possible. All facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted.

The petition under 37 CFR 1.47(a) is dismissed.

Regarding fees, pursuant to petitioners' authorization, deposit account no. 16-2480 will be charged the required \$130.00 Rule 47 petition fee and the \$130.00 surcharge for filing a late declaration.

PETITION UNDER 37 CFR 1.137(b)

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

This petition lacks item (1) above. The required reply is an acceptable declaration -- whether fully executed, or partially executed with Rule 47 status accorded to the application. Since the petition under 37 CFR 1.47(a) is dismissed, petitioners have not submitted the required reply to revive the application.

The petition under 37 CFR 1.137(b) is dismissed.

Pursuant to petitioners' authorization, the \$1,330 fee associated with filing a petition to revive under 37 CFR 1.137(b) was charged to deposit account no. 16-2480 on May 17, 2004.

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries should be directed to the undersigned at (703) 308-6712.

A handwritten signature in black ink, appearing to read "E. Shirene Willis". The signature is written in a cursive, flowing style.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions